

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Son Phan-Anh et al.
Title: RECOVERY TECHNIQUES IN MOBILE NETWORKS
Appl. No.: 09/802,861
Filing Date: 3/12/2001
Examiner: Nghi H. Ly
Art Unit: 2617
Confirmation Number: 3307

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-referenced application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per procedure set forth in 37 C.F.R. § 1.705(d) to support their contention that the patent term adjustment should be 1643 days instead of 449 days as calculated by the United States Patent and Trademark Office (USPTO).

The Patent Office determined that the patent was entitled to 449 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect.

Wyeth v. Kappos, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1643 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1817 days
(b) Total Applicant delay:	174 days
Final PTA Determination:	1643 days

Applicants therefore respectfully request that the patent be accorded 1643 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date February 22, 2010

FOLEY & LARDNER LLP

Customer Number: 23524

Telephone: (608) 258-4263

Facsimile: (608) 258-4258

By 

Paul S. Hunter
Attorney for Applicant
Registration No. 44,787

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Docket Number 088245-0137
 Application Number 09/802861
 Patent Number N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	03/12/2001	0		
	14 month From Application date	05/12/2002	426		
Edit Delete	Non-Final Office Action	11/28/2003	991	535	
	Non-Final Office Action + 3 months	02/28/2004	1,083		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	03/01/2004	1,085		2
	3 Year Period Starts	03/12/2004	1,096		
Edit Delete	Non-Final Office Action	05/21/2004	1,166		
	Non-Final Office Action + 3 months	08/21/2004	1,268		
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	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	02/21/2005	1,442		
Edit Delete	Final Office Action	04/06/2005	1,486	(44)	
	Final Office Action + 3 months	07/06/2005	1,577		
Edit Delete	Notice of Appeal Received at PTO	10/06/2005	1,669		92
Edit Delete	Appeal Brief Received at PTO	04/06/2006	1,851		
Edit Delete	Non-Final Office Action	06/30/2006	1,936		
	Non-Final Office Action + 3 months	09/30/2006	2,028		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	10/19/2006	2,047		19
Edit Delete	Restriction Requirement	01/08/2007	2,128		
Edit Delete	Restriction Requirement Response Received at PTO	02/08/2007	2,159		
Edit Delete	Final Office Action	05/08/2007	2,248		
Edit Delete	Request For Continued Examination (including amendment)	08/02/2007	2,334	1238	
	3 Year Period Stopped	08/02/2007	2,334		
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	Non-Final Office Action Rsp. Rev'd at PTO + 4 mo	04/22/2009	2,963	
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Edit Delete	Notice of Allowance	11/25/2009	3,180	
	Projected Patent Grant Date	06/08/2010	3,375	
			Totals:	1,817
			PTA:	1,643
				174

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